



STATE OF NEW JERSEY

In the Matter of Louis Hightower
Hudson County Sheriff's Department

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2018-418
OAL DKT. NO. CSV 12874-17

ISSUED: JULY 20, 2018

BW

The appeal of Louis Hightower, Sheriff's Officer, Hudson County Sheriff's Department, 10 working day suspension, on charges, was heard by Administrative Law Judge Thomas R. Betancourt, who rendered his initial decision on May 30, 2018. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on July 18, 2018, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Louis Hightower.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18TH DAY OF JULY, 2018



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 12874-17

CSC DKT. #2018-418

LOUIS HIGHTOWER,

Appellant,

v.

HUDSON COUNTY SHERIFF'S

DEPARTMENT,

Respondent.

Jeffrey D. Catrambone, Esq., Sciarra & Catrambone, for Appellant (Sciarra & Catrambone, attorneys)

John A. Smith, III, Esq., Assistant County Counsel, for Respondent

Record Closed: May 11, 2018

Decided: May 30, 2018

BEFORE THOMAS R. BETANCOURT, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant, Louis Hightower, appeals a Final Notice of Disciplinary Action, dated July 28, 2017, imposing a ten-day suspension without pay.

The Civil Service Commission transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, to the Office of Administrative Law (OAL), where it was filed on September 5, 2017.

A prehearing conference was conducted on September 20, 2017, and a prehearing order of the same date was entered by the undersigned.

A hearing was held on February 15, 2018. The record remained open to permit the parties to file post-hearing submissions. The record closed on May 11, 2018.

ISSUES

Whether there is sufficient credible evidence to sustain the charges set forth in the Final Notice of Disciplinary Action: Insubordination, N.J.A.C. 4A:2-2.3(a)(2); Neglect of Duty, N.J.A.C. 4A:2.2-3(a)(7); and, Other Sufficient Cause N.J.A.C. 4A:2-2.3(a)(12); and, if sustained, whether a penalty of a ten-day suspension without pay is warranted.

SUMMARY OF RELEVANT TESTIMONY

Respondent's Case

Patrick Schifano, testified as follows:

He is a captain with the Hudson County Sheriff's Department. At the time of the incident of June 9, 2017, he was the commanding officer. After he works his normal shift of 8:00 a.m. to 4:00 p.m. a supervisory officer is named as the "night boss." On June 9, 2017, the night boss was Sergeant Ingrid Baird. A sergeant can give an order to an officer or detective. It does not matter if that sergeant is the particular officer's direct supervisor as a sergeant is a superior officer and may issue orders.

He is aware of an interaction between Sergeant Baird and Appellant that occurred on June 8, 2017. He had requested written reports from both of them. He also requested written reports from Lieutenant Toft, Sergeant Carrillo, and Appellant. Captain Schifano also spoke with these individuals, except for Appellant.

Captain Schifano recommended disciplinary action against appellant after he completed a review of the interaction between Sergeant Baird and Appellant. That resulted in the issuance of a Preliminary Notice of Disciplinary Action (PNDA). The charges set forth therein were sustained in a Final Notice of Disciplinary Action.

As Appellant had previously been the subject of a minor disciplinary action Captain Schifano recommended major disciplinary action.

Sergeant Baird had the authority to order Appellant to stay on the job. The Rules and Regulations of the Hudson County Sheriff's Department, Rule 1.4, requires an officer to promptly comply with a lawful order of a supervisor.

The situation on June 8, 2017, was an emergent circumstance as a medical run may have been needed to transport a prisoner. Two officers are required to perform a medical run.

Captain Schifano was not present on June 8, 2017.

Officers should be aware of who is the night boss.

Captain Schifano admitted that Appellant ultimately obeyed Sergeant Baird's order. He felt Appellant was disrespectful towards Sergeant Baird by not obeying the order and trying to leave the building. He also stated being given an order and then walking away is a bit insolent.

Captain Schifano does not know if Sergeant Baird made inquiry into her unit for available officers for the medical run. Appellant is not in her unit.

It does not matter if Sergeant Baird is the night boss or just a sergeant. She is a superior officer and Appellant did not promptly comply with her order.

Ingrid Baird testified as follows:

She is a sergeant with the Hudson County Sheriff's Department. On June 9, 2017, she was the night boss. She oversees the building at night. That night she received a telephone call from Investigator Trombetta that there was a potential need for a medical run. The medical run was for a person waiting to be picked up on a warrant issued out of Jersey City. She told Investigator Trombetta to advise Appellant he was needed for the medical run. No one from her unit was available to do the medical run. Two officers are needed for a medical run and she needed to be sure she had them available. She considered the matter emergent.

Thereafter she went to the lobby of the building. Investigator Conti and Officer Domingues were working at the time. Sergeant Baird told Investigator Conti he was required to do the medical run. Investigator Conti complied with Sergeant Baird's order.

Sergeant Baird had authority to issue an order to an officer. She did not need to be that particular officer's direct supervisor. She had the right to order Appellant to do mandatory overtime.

Sergeant Baird spoke directly with Appellant in the lobby. She saw him leaving the building. She apologized to Appellant, but said she needed him. He said he had signed out and was not staying. Sergeant Baird again stated the order. Appellant responded by stating he was going to speak with his direct supervisor, Sergeant Carrillo. The Appellant returned approximately fifteen minutes later. Ultimately Appellant complied with the order.

Sergeant Baird thought the situation with Appellant was inappropriate and his behavior unacceptable. Sergeant Baird stated that Appellant "supervisor shopped."

She never had a previous problem with Appellant. She is aware of his prior five-day suspension.

The medical run was not needed as Jersey City Police picked up the individual and transported him.

Michael Trombetta testified as follows:

He is an Investigator with the Hudson County Sherriff's Department. He was on duty on June 9, 2017. He noted a prisoner had a possible medical condition and called Sergeant Baird to advise her. Sergeant Baird asked if there were available officers. Investigator Trombetta replied that Appellant was available. Sergeant Baird asked Investigator Trombetta to tell Appellant he was needed for a possible medical run. When told he needed to stay Appellant replied "no" and left. Investigator Trombetta told Appellant a second time that Sergeant Baird required him to stay.

Carlos Carrillo testified as follows:

He is a sergeant with the Hudson County Sheriff's Department. He was on duty on June 9, 2017. He is Appellant's direct supervisor. He spoke with Appellant in the garage. Appellant asked him if he needed to stay to do a medical run. Appellant stated he was "mandated" by Sergeant Baird when he was leaving the building. Sergeant Carrillo advised Appellant it would be in his best interest to follow Sergeant Baird's order. Sergeant Carrillo could not overrule Sergeant Baird. The conversation with Appellant took approximately five minutes. He prepared a written report regarding his conversation with Appellant.

Generally, officers do not question an order from a superior officer.

Joseph Toth testified as follows:

He is a Lieutenant with the Hudson County Sherriff's Department. He was on duty on June 9, 2017. He spoke with Appellant and Sergeant Carrillo at approximately 5:00 p.m. He was leaving for the day and was stopped by both men. Appellant told him of the order by Sergeant Baird regarding a medical run and that he wanted to leave. Lieutenant Toth asked Appellant if he had an emergency. Appellant stated he did not. He just wanted to leave. Lieutenant Toth stated that Sergeant Baird's order was legitimate. He told Appellant it would be in his best interest to go back and find Sergeant Baird. He prepared a written report regarding the matter.

Andrew Conti testified as follows:

He is an officer in the Hudson County Sheriff's Department. He was on duty on June 9, 2017. He was doing security in the lobby. He could not remember the name of the other officer working with him. He spoke with Sergeant Baird who told him to stay past his shift for a medical run. His shift ended at 6:00 p.m. Two officers are needed to do a medical run. He saw Appellant in the lobby walking toward the front door. Officer Conti did not speak with Appellant. He heard Sergeant Baird tell Appellant to stay. Appellant responded that he was not staying. Sergeant Baird stated it was an order. Appellant responded by stating he would speak with his own supervisor. He estimated the distance between Appellant and Sergeant Baird to be thirty-five feet. Officer Conti complied with Sergeant Baird's order and reported to the holding cell at 5:50 p.m. He did not recall if Appellant was there. Officer Conti thought Appellant was disrespectful and should not speak to a supervisor the way he did. Officers are trained to follow orders of superiors, even if given by someone not a direct supervisor. The medical run was not necessary as Jersey City Police picked up the prisoner. He did not prepare a written report.

Andrea Domingues testified as follows:

She is an officer with the Hudson County Sheriff's Department. She was on duty on June 9, 2017. She was working security in the lobby with Officer Conti. Sergeant Baird was the night supervisor. She does not recall Sergeant Baird speaking with

Officer Conti. She did not know if Officer Conti was asked to do a medical run. She observed Sergeant Baird and Appellant speak. Appellant was leaving at the time and Sergeant Baird asked Appellant to stay. She recalls Appellant saying, "I refuse to stay." Appellant told Sergeant Baird he would speak with Sergeant Carrillo. Sergeant Baird responded that Sergeant Carrillo was not her supervisor. Sergeant Baird ordered Appellant to stay for mandatory overtime. She stated a sergeant has the right to give an order. She considered this a direct order. She did not think Appellant was disrespectful. She did not prepare a written report.

Appellant's Case

Louis Hightower, Appellant, testified as follows:

He is an officer with the Hudson County Sherriff's Department. He was on duty on June 9, 2017. His normal shift is 8:30 a.m. to 4:30 p.m. At approximately 5:05 p.m. he was leaving the court house. Investigator Trombetta asked him if he was interested in working overtime. He had no other conversation with Investigator Trombetta. He saw Investigator Trombetta on the telephone. He spoke with him in the hallway. When he went to leave, Investigator Trombetta told him that Sergeant Baird mandated him to stay. He replied that he had already signed out. Sergeant Baird is not his immediate supervisor. He was not aware she was the night boss that day. He went to leave the building and Sergeant Baird saw him and told him he had to stay for overtime. That conversation lasted less than a minute. He told Sergeant Baird he was not the only one there and that he was going to talk with his supervisor, Sergeant Carrillo. He knew Sergeant Carrillo was downstairs. He told Sergeant Carrillo that Sergeant Baird had mandated him for overtime. Sergeant Carrillo told him to obey the order. Lieutenant Toft also told him to obey the order. He then went to the ground floor to tell Sergeant Baird he was going to get changed. His intention at this point was to do the medical run. Sergeant Baird told him not to question her order. They were arguing with each other. He stated he was not being insubordinate. He prepared a written report. He is familiar with the overtime procedures set out in the Collective Bargaining Agreement (CAB). Overtime is first assigned within a unit. Sergeant Baird's unit is the second

floor. He did not know if the second-floor unit was questioned for overtime. If the unit cannot do the overtime then it is assigned to the division. He is not a member of Sergeant Baird's unit. He was not intentionally insubordinate. He never said he would not stay. The medical run never took place. He left the building about 6:45 p.m. He understood the order relayed by Investigator Trombetta, but Investigator Trombetta cannot relay that order. His intention was to leave when Sergeant Baird told him to stay. He stated he could not be mandated to stay by another officer. He does not know how to obey an order relayed by another officer. He does not have to obey an order if relayed by an officer of same rank. He understands the rules of the department and that he must carry out an order. He felt he was targeted by this order.

FINDINGS OF FACT

I FIND the following FACTS:

1. Appellant is employed by the Hudson County Sheriff's Department.
2. He was on duty on June 9, 2017, and was about to leave at the end of his shift.
3. He was advised by Investigator Trombetta not to leave at the direction of Sergeant Baird.
4. Sergeant Baird was the "night boss" on June 9, 2017, and had the authority to order appellant to perform mandatory overtime.
5. Investigator Trombetta informed appellant a second time not to leave as he was being mandated by Sergeant Baird to stay for a possible medical run.
6. Appellant then attempted to leave the building and was confronted by Sergeant Baird who gave appellant the order directly.
7. Appellant responded by advising Sergeant Baird he was not the only officer available and that he would go speak with his supervisor, Sergeant Carillo.

8. Rather than immediately complying with the order appellant sought out his direct supervisor, Sergeant Carillo, to discuss whether he should comply with Sergeant Baird's order.
9. Appellant did speak with Sergeant Carillo and Lieutenant Toft, who happened to be with Sergeant Carillo at the time. Appellant was advised by Sergeant Carillo to obey Sergeant Baird's order.
10. Thereafter, Appellant did obey the order.
11. Appellant admits that the proper procedure regarding an order is to comply with said order and thereafter file a grievance should he think the order was inappropriate.
12. Appellant is required by Rules and Regulations of the Hudson County Sheriff's Office to comply with an order from a superior officer. (R-5.)
13. Sergeant Baird is Appellant's superior officer.
14. The collective bargaining agreement between Appellant's union and the Hudson County Sheriff's Department require Appellant to continue to observe all rules and regulations pending the outcome of a grievance. (R-7.)
15. Appellant was served with a Preliminary Notice of Disciplinary Action (PNDA) dated June 21, 2017, charging him with insubordination, neglect of duty, and other sufficient cause. (R-1.)

LEGAL ANALYSIS AND CONCLUSION

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6, governs a civil service employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointments and broad tenure protection. See Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this state is to provide appropriate appointment, supervisory and other personnel authority to public officials in order that they may execute properly their constitutional and statutory

responsibilities. N.J.S.A. 11A:1-2(b). In order to carry out this policy, the Act also includes provisions authorizing the discipline of public employees.

A public employee who is protected by the provisions of the Civil Service Act may be subject to major discipline for a wide variety of offenses connected to his or her employment. The general causes for such discipline are set forth in N.J.A.C. 4A:2 2.3(a). In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relies by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Therefore, the judge must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Del., Lackawanna and W. R.R., 111 N.J.L. 487, 490 (E. & A. 1933). This burden of proof falls on the agency in enforcement proceedings to prove violations of administrative regulations. Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987).

This forum has the duty to decide in favor of the party on whose side the weight of the evidence preponderates, in accordance with a reasonable probability of truth. Evidence is said to preponderate "if it establishes 'the reasonable probability of the fact.'" Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). The evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein, 26 N.J. at 275. The burden of proof falls on the appointing authority in enforcement proceedings to prove a violation of administrative regulations. Cumberland Farms, 218 N.J. Super. at 341. The respondent must prove its case by a preponderance of the credible evidence, which is the standard in administrative proceedings. Atkinson, 37 N.J. 143. The evidence needed to satisfy the standard must be decided on a case-by-case basis.

An appeal to the Merit System Board requires the Office of Administrative Law to conduct a de novo hearing and to determine appellant's guilt or innocence as well as the appropriate penalty. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987).

There is no constitutional or statutory right to a government job. State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). A civil service employee who commits a wrongful act related to his duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6. The issues to be determined at the de novo hearing are whether the appellant is guilty of the charges brought against him and, if so, the appropriate penalty, if any, which should be imposed. See Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962). In this matter, the Hudson County Sheriff's Department bears the burden of proving the charges against appellant by a preponderance of the credible evidence. See Polk, 90 N.J. 550; Atkinson, 37 N.J. 143.

Police officers are held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). They represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Maintenance of strict discipline is important in military-like settings such as police departments, prisons and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority cannot be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

An employee may be disciplined for insubordination, neglect of duty, and other sufficient cause, among other reasons. N.J.A.C. 4A:2-2.3. This matter involves a major disciplinary action, brought by the respondent appointing authority against appellant, seeking a ten-day suspension. Respondent has charged Appellant with insubordination, neglect of duty, and other sufficient cause.

The salient facts in this matter are basically undisputed. Appellant was first advised by Investigator Trombetta that he was to not leave per Sergeant Baird as he may be needed to do a medical run. Appellant's reply was that he had checked out and was leaving. Investigator Trombetta advised Appellant a second time that Sergeant Baird was mandating he stay. Thereafter Appellant went to the lobby to leave the building. In the lobby Sergeant Baird gave Appellant the order directly. Appellant did not promptly obey the order. Instead he went to speak with his immediate supervisor, Sergeant Carrillo. Sergeant Carrillo, and Lieutenant Toft, who was there at the time, advised Appellant to obey the order.

Appellant argues that not much time transpired from the time he was given the order directly by Sergeant Baird and the time when he eventually complied with the order. This argument is a red herring. There is no dispute he did not promptly comply with the order as required by the Rules and Regulations of the Hudson County Sheriff's Department. Rather Appellant sought to not comply with the order by speaking with Sergeant Carrillo. He knew, or should have known, the rules. He admitted in his testimony that he is to obey superior officers' orders. He admitted in his testimony that the proper procedure is to file a grievance if he believed an order to be inappropriate. That he ultimately complied does not negate his initial non-compliance.

INSUBORDINATION N.J.A.C. 4A:2-2.3(a)(2)

Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Importantly, this definition incorporates acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Thus, insubordination can occur even where no specific order or direction has been given to the allegedly insubordinate person.

Further, Insubordination, though not defined in the New Jersey Administrative Code, has been given a more expansive definition, to include acts of disobedience, non-compliance and non-cooperation." In re Stanziale, CSV 4113-00, Final Decision (January 29, 2001), <<http://njlaw.rutgers.edu/collections/oal/>>, aff'd, No. A-3492-00

(App. Div. April 11, 2002). It thus encompasses more than a simple refusal to obey an order. In re Chaparro, 2011 N.J. CSC LEXIS 102 (N.J. CSC 2011) (CSC decision citing In re Stanziale, No. A-3492-00T5 (App. Div. April 11, 2002) (employee's conduct in which he refused to provide complete and accurate information when requested by a superior constituted insubordination)); In re Lyons, No. A-2488-07T2 (App. Div. April 26, 2010), <<http://njlaw.rutgers.edu/collections/courts/>>; In re Moreno, CSV 14037-09, Initial Decision (June 10, 2010), modified, CSC (August 9, 2010), <<http://njlaw.rutgers.edu/collections/oal/>>; In re Bell, CSV 4695-09, Initial Decision (May 12, 2010), modified, CSC (June 24, 2010), <<http://njlaw.rutgers.edu/collections/oal/>>; In re Pettiford, CSV 08801-07, Initial Decision (March 13, 2008), adopted, Merit System Board (June 13, 2008), <<http://njlaw.rutgers.edu/collections/oal/>> (Moreno, Bell, and Pettiford all concerning disrespect of a supervisor).

The Civil Service Commission also has determined that an appellant is required to comply with an order of his or her superior, even if he or she believed the orders to be improper or contrary to established rules and regulations. See Palamara v. Twp. of Irvington, A-5408-05T3 (App. Div. February 28, 2005), <<http://njlaw.rutgers.edu/collections/courts/>>; compare, In re Allen, CSV 11160-04, Initial Decision (May 23, 2005), remanded, Merit System Board (July 14, 2005), CSV 09132-05 Initial Decision, (November 22, 2005), adopted, Merit System Board (January 26, 2006) <<http://njlaw.rutgers.edu/collections/oal/>> (in which the Board determined that the appellant's disobedience was justified by concerns for the safety of the clients on a bus and reversed his removal).

I **CONCLUDE** that appellant is guilty of Insubordination for not promptly following the direct order of Sergeant Baird. Insubordination is defined in the Rules and Regulations of the Hudson County Sheriff's Department, R. 1.4(a), as follows:

Personnel shall promptly obey all lawful orders of any supervisor. Failure or deliberate refusal of any employee to obey a lawful order of a supervisor, ridiculing a supervisor or his order, in or out of his presence, or disrespectful, mutinous, insolent or abusive language directed toward a supervisor, shall constitute insubordinate or serious breach of discipline.

NEGLECT OF DUTY N.J.A.C. 4A:2-2.3(a)(7)

Neglect of duty is not defined under the New Jersey Administrative Code, but the charge has been interpreted to mean that an employee has failed to perform and act as required by the description of their job title. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). It has been applied both to not fully carrying out duties and to acting incorrectly. See, e.g., In re Marucci, CSV 07241-09, Initial Decision (January 1, 2010), modified, CSC (March 6, 2010), <<http://njlaw.rutgers.edu/collections/oal/>>, aff'd, A-3607-09T1 (App. Div. January 3, 2012), <<http://njlaw.rutgers.edu/collections/courts/>> (removal of a police officer with no disciplinary record where he failed to remove drugs from under a sewer grate and then lied about his actions); see also In re Dona, CSV 10782-08, Initial Decision (August 3, 2009), modified, CSC (August 8, 2009), <<http://njlaw.rutgers.edu/collections/oal/>> (affirming twenty-day suspension for failing to pat down inmate properly, missing a wooden shank).

I **CONCLUDE** that appellant is guilty of Neglect of Duty for not promptly complying with the direct order of Sergeant Baird. Neglect of Duty is defined in the Rules and Regulations of the Hudson County Sheriff's Department, R. 1.3, as follows:

Personnel are required to give suitable attention to the performance of their duties. Any act or omission or commission indicating failure to perform or the negligent performance or compliance to any rule, regulation, directive, order or standard operative procedure as dictated by Sheriff's Office practice, or as published, which causes any detriment to the Sheriff's Office, its personnel, and any prisoner or to any member of the public, shall be considered neglect of duty.

OTHER SUFFICIENT CAUSE N.J.A.C. 4A:2-2.3(a)(12)

There is no definition in the New Jersey Administrative Code for other sufficient cause. Other sufficient cause is generally defined in the charges against Appellant. The charge of other sufficient cause has been dismissed when "respondent has not

given any substance to the allegation.” Simmons v. City of Newark, CSV 9122-99, Initial Decision (February 22, 2006), adopted, Comm’r (April 26, 2006), <http://njlaw.rutgers.edu/collections/oal/final/>. Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.

I **CONCLUDE** that appellant is guilty of Other Sufficient Cause for violating this standard of good behavior.

The final issue to be addressed is the appropriate penalty warranted under these circumstances. Appellant’s prior disciplinary record may be considered for guidance in determining the appropriate penalty, as the principle of progressive discipline is applied in this state. Bock, 38 N.J.at 523. Although an employee’s past record may not be considered for purposes of proving the present charge, past misconduct can be a factor in determining the appropriate penalty for the current misconduct. In re Herrmann, 192 N.J. 19, 29 (2007); In re Carter, 191 N.J. 474, 484 (2007); Bock, 38 N.J. at 522-23. The underlying intendment of progressive discipline is to provide an employee with notice of his deficiencies and the opportunity to correct them.

Unless the penalty is unreasonable, arbitrary, or offensively excessive, it should be permitted to stand. Ducher v. Dep’t of Civil Serv., 7 N.J. Super. 156 (App. Div. 1950). Appellant’s entire record of performance must be considered when attempting to determine if the judgment of the appointing authority was unreasonable, arbitrary or capricious. See Bock, 38 N.J. 500.

Appellant has one prior disciplinary matter arising from an incident from October 30, 2015. Appellant refused to comply with an order to man a crosswalk post. Appellant’s contention at the time was that he was protecting his contractual rights as assignment to this post was by seniority. A five-day suspension was imposed and upheld by an arbitrator.

I **CONCLUDE** that the respondent has carried its burden to prove by a preponderance of the credible evidence that appellant was guilty of the Charges sustained in the Final Notice of Disciplinary Action: Insubordination N.J.A.C. 4A:2-2.3(a)(2); Neglect of Duty N.J.A.C. 4A:2.2-3(a)(7); and, Other Sufficient Cause N.J.A.C. 4A:2-2.3(a)(12); and, that the penalty of a ten-day suspension without pay should be affirmed.

ORDER

Based upon the foregoing, I **ORDER** that the Final Notice of Disciplinary Action, and the imposition of a ten-day suspension without pay, is hereby **AFFIRMED**; and,

It is further **ORDERED** that Appellant's appeal is **DISMISSED**, with prejudice.

I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

May 30, 2018
DATE


THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

May 30, 2018
LISA JAMES-BEAVERS
ACTING DIRECTOR AND CHIEF
ADMINISTRATIVE LAW JUDGE

Date Mailed to Parties: May 31, 2018

db

APPENDIX

List of Witnesses

For Appellant:

Louis Hightower, Appellant

For Respondent:

Capt. Patrick Schifano
Sgt. Ingrid Baird
Off. Michael Trombetta
Sgt. Carlos Carrillo
Lt. Joseph Toft
Off. Andrew Conti
Off. Andrea Domingues

List of Exhibits

For Appellant:

None

For Respondent:

- R-1 PNDA dated 6/21/17 and FNDA dated 7/25/17
- R-2 Written reports of Sergeant Baird, Lieutenant Toft, Sergeant Carrillo, and Appellant
- R-3 NO DOCUMENT MARKED
- R-4 Notice of Minor Disciplinary Action dated 10/30/15
- R-5 Hudson County Sheriff's Department Rules and Regulations
- R-6 Arbitrator's decision dated 11/7/16
- R-7 CBA dated 1/1/16